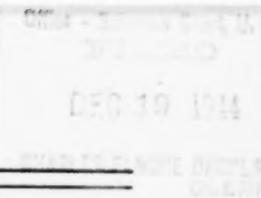




No. 708

QD



IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

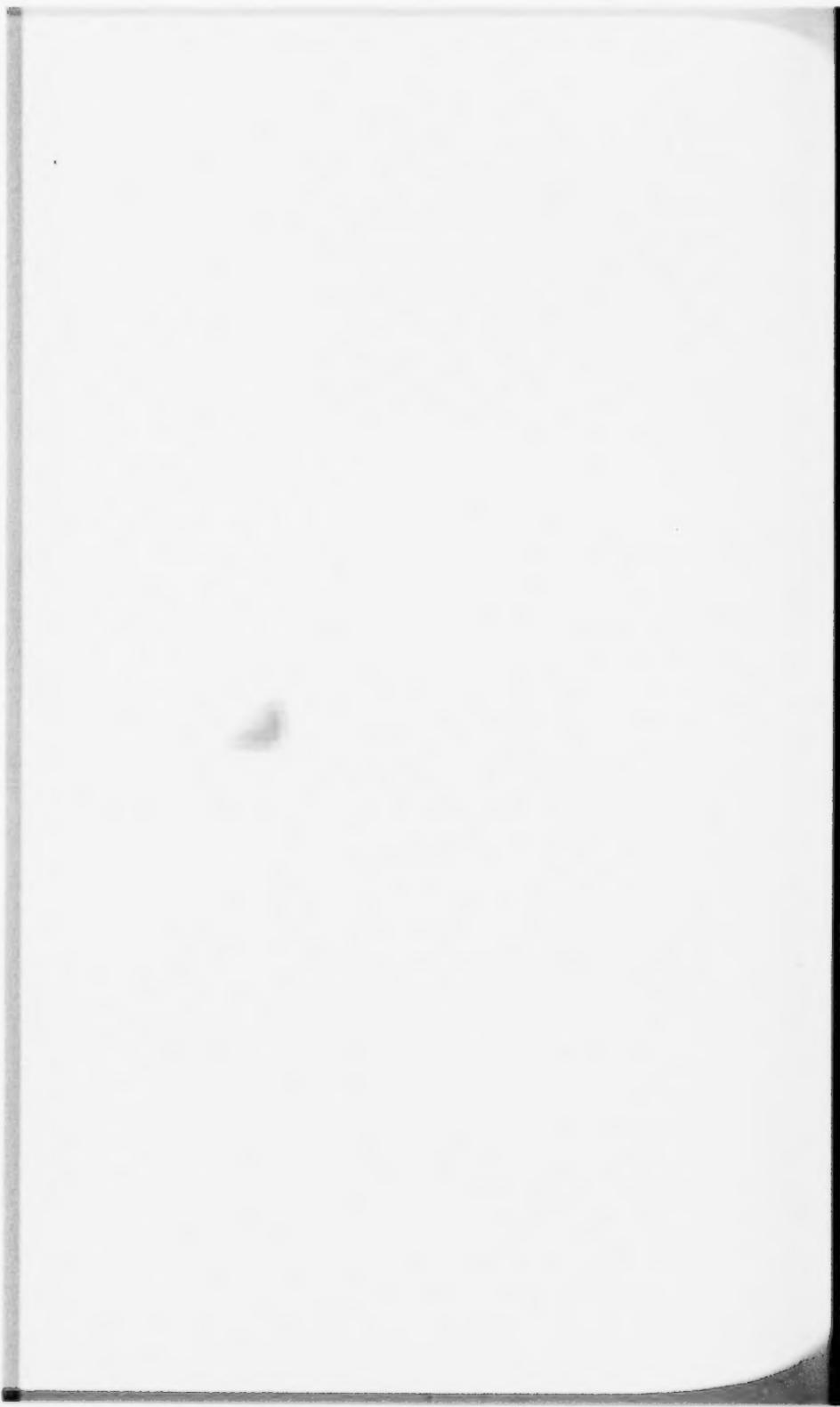
COMMISSIONER OF INTERNAL REVENUE,

Petitioner,

v.

ESTATE OF CAROLINE WHITE, DECEASED, WALDRON KINTZING POST, JOHN ROSS DELAFIELD AND BACHE McE. WHITLOCK, AS EXECUTORS OF THE WILL OF CAROLINE WHITE, DECEASED.

BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI



IN THE
Supreme Court of the United States
OCTOBER TERM, 1944
No. 708

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,
v.

Estate of CAROLINE WHITE, Deceased, WALDRON KINTZING Post, JOHN ROSS DELAFIELD and BACHE McE. WHITLOCK, as Executors of the Will of CAROLINE WHITE, Deceased.

**BRIEF IN OPPOSITION TO PETITION FOR WRIT
OF CERTIORARI**

The Government (the Petitioner) claims that the testatrix should have included in her gross income for 1938 and 1939 the interest that she received on bonds of Triborough Bridge Authority. The income tax law exempts "interest upon obligations of a State, Territory or any political subdivision thereof."

The question in this case is whether interest on bonds of Triborough Bridge Authority comes within this exemption. The Circuit Court of Appeals decided that such interest was within such exemption. There is no constitutional question involved unless the decision of the Circuit Court of Appeals on this point is wrong.

The history of the Government's claim is of importance in connection with its application for a writ.

Beginning with a ruling dated November 3, 1923, there have been a long series of rulings by the Bureau of Internal

Revenue holding that interest on bonds of the character of Triborough Bridge Authority bonds was exempt from income tax. While some rulings were at first adverse, these were, on reconsideration, reversed. (Volume entitled, "Exhibits", pages 5 to 84.)

In fact, the Bureau ruled on the very bonds involved in this case. The ruling by Guy T. Helvering, Commissioner of Internal Revenue, dated February 17, 1937, addressed to Robert Moses, then and still Chairman of Triborough Bridge Authority, stated:

"It is believed that the Triborough Bridge Authority is in effect an instrumentality of the City of New York, a political subdivision of the State of New York; that the bonds issued by such Authority will be, in effect, bonds of the city issued in the exercise of its borrowing power; and that interest on such bonds will, therefore, be exempt from Federal income tax."

("Exhibits", page 53; also Appendix to Petitioner's Brief, page 26.)

Not only has the Government made this long series of rulings that interest on bonds of this character is tax exempt, but until 1941, it never made any attempt to tax interest on such bonds. The first attempt to tax such interest appears to have been made on or about March 14, 1941, when deficiency notices were sent to only seven of all the holders of bonds of the New York Port Authority. This was followed by sending deficiency notices on or about July 19, 1941 to only two of all the holders of Triborough Bridge Authority bonds, one of them being the Respondents.

At the time these notices were mailed to the two holders of Triborough Bridge Authority Bonds, a press release was given out stating:

"In order to avoid putting a large class of taxpayers to unnecessary expense, the Bureau of Internal Revenue will proceed only against two of the many Triborough Bridge Authority Bondholders."

Obviously, the Government does not consider its case strong as it has been willing to let the statute of limitations run in favor of all the bondholders to whom no notices of deficiency were sent. (This press release is in "Exhibits" at page W12.)

The United States Tax Court and the Circuit Court of Appeals have decided this case against the Government on the statutory construction point, namely, holding that the bonds are exempt by statute, and neither of these Courts considered the constitutional question. Thus, both these Courts have followed the Government's own construction of the statute contained in the rulings above referred to and confirmed by its consistent and still continued practice of not attempting a general enforcement of the tax.

With this history of the position of the Government and the decisions of the Tax Court and of the Circuit Court of Appeals, the law is well established without the necessity for a decision by this Court.

There is no conflict of decisions between different Circuit Courts of Appeal.

One other point should be noted. In the press release issued by the Government as stated above at the time the deficiency notices were mailed, the following statement appears:

"Should the Supreme Court now uphold the Treasury's position, the Treasury intends to renew its recommendation to Congress (1) to abate the payment of back taxes, (2) to exempt outstanding issues from taxation, and (3) to begin the taxation of future issues.

"Assuming that Congress carries out these recommendations, no holders of Triborough Bridge Authority and similar obligations have any reason to fear the imposition of taxes on obligations now outstanding, Treasury attorneys said."

(Pet. Ex. 3 on page W12 of Volume of "Exhibits".) It seems inconsistent for the Government to attempt in this

litigation to enforce taxes which it expects to ask Congress to abate.

We refer to the Brief in Opposition to Petition for a Writ of Certiorari in the companion case, relating to the Port of New York Authority, now before this Court entitled, "*Commissioner v. Estate of Shamberg*", No. 707, for additional grounds for opposing the petition.

It is respectfully submitted that the Commissioner's petition for a writ of certiorari should be denied.

LEWIS L. DELAFIELD, JR.,
Attorney for Respondents.

December, 1944.

